

Deferring to Illinois EPA, Environmental Appeals Board Rules That PSD Permits Are Not Required to Regulate Greenhouse Gas Emissions

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U.S. EPA's Environmental Appeals Board recently issued an interesting decision concerning greenhouse gas requirements of air permits in the case of *In re: Power Holdings of Illinois, LLC, PSD Appeal No. 09-04*. This case involves a petition for review filed by the Sierra Club challenging certain conditions of a prevention of significant deterioration ("PSD") permit issued by the Illinois Environmental Protection Agency, under delegated federal authority, to Power Holdings of Illinois, LLC for construction of a synthetic natural gas ("SNG") manufacturing plant in Jefferson County, Illinois.

The Sierra Club raised three issues on which it sought review. The first two issues were: (1) the permit fails to include a flare minimization plan as part of the final permit and allows Power Holdings to develop such a plan without full public participation; (2) the permit allows SNG or natural gas to be used to fire "superheaters" at the plant without addressing emissions associated with the manufacture of SNG. The Appeals Board rejected the Sierra Club's challenge on these two issues. The Board first held that the flare minimization plan supplements other permit requirements and properly requires Power Holdings to develop methods to reduce emissions from flaring events based on actual operating experience. The Board then held that Sierra Club failed to demonstrate the presence of collateral environmental impacts that would justify eliminating SNG as a fuel for the superheaters.

The third issue raised by Sierra Club was that the permit failed to regulate greenhouse gases (carbon dioxide and methane), and thus violated a State emissions limitation at Ill. Admin. Code tit. 35 § 201.141 incorporated into Illinois' approved state implementation plan ("SIP"). Section 201.141 provides, in part, as follows:

"No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois"

According to Sierra Club, greenhouse gases constitute "contaminants" causing or contributing to "air pollution" under Section 201.141. However, the Illinois EPA disagreed and made clear to the Board that it does not interpret Section 201.141 as requiring regulation of greenhouse gas emissions. The Board deferred to Illinois EPA's interpretation and rejected Sierra Club's argument:

"Because the State of Illinois has interpreted the disputed provision of its state SIP as inapplicable to greenhouse gases, and because this interpretation does not strike the Board as so unreasonable as to not be entitled to the substantial deference afforded state interpretations of

their own laws, the Board declines to substitute its judgment for that of the IEPA in this instance. Review is therefore denied on this issue."

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